

Again, the Applicant reiterates that the foregoing is merely a statement of fact, and not an admission or conclusion of law that Claims 1-15 are anticipated under the law. In this regard, it is respectfully submitted that in the abstracts and presentations, the inventor broadly and generally referred to or disclosed the presently claimed constructs, however, none of the sequences, as recited in Claim 9, were disclosed. Further, it is respectfully submitted that the disclosure in the abstracts and presentations was insufficient for one of ordinary skill in the art to make the leap to the sequences that are now the subject of Claims 1-15. It is well-settled law that an invention cannot be anticipated by a non-enabling prior art. *In re Donohoe*, 766 F. 2d 531, 226 USPQ 619 (Fed. Cir. 1985). See also the *Appeal Brief Section (VII) (A) (a)*.

In this regard, at least one dispositive proof of non-enablement of the abstracts and presentations is the present Request itself, where the Examiner, legally presumed to be the person having ordinary skill in the art to which the invention pertains, states that “after reviewing the submitted information [multiple abstracts and 360 slides], a basic question still remains: is the insulin regulator construct disclosed in the abstracts and presentations the same insulin construct that is now claimed?” (Emphasis added).

Where, as here, one skilled in the art (the Examiner) has available all the factual information that would have been available to the hypothetical person of ordinary skill in the art under the law, and has the benefit of the invention, albeit in hindsight, the Examiner cannot reach the conclusion that the construct(s) disclosed in the abstracts and presentations is the same as that now claimed, it is difficult, if not impossible, to